IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD.

HON'BLE SRI JUSTICE V.V. S. RAO

Writ Petition No. 21852 of 2005

Dated: 7th October 2005

Between:

Dr.M.Yellappa and 3 others. … Petitioners

And

The Government of A.P., rep. By
its Secretary, Roads & Buildings, Secretariat,
Hyderabad. and 5 others.

… Respondents

Oral Order:

Petitioners 2 to 4 are sons of petitioner No.1. They are owners of houses bearing Nos.1-4-3/4, 4A and 1-4-3/3, 3A and 3B situated at Gadwal, Mahabubnagar District. The 6th respondent herein served a notice in RoC No.G/1679/2005 dated 19-8-2005 informing the first petitioner that there is an encroachment of old RCC structures bearing No.1-4-3 belonging to him and he was requested to remove the structures to the extent of R & B road boundary.

This is assailed in the writ petition.

After getting instructions in the matter, the learned standing counsel for Municipal Council, Gadwal, Sri P. Radhakrishna submits that the petitioners' houses are constructed by encroaching upon the road and, therefore, notice under Section 192 of the A.P. Municipalities Act was issued. The petitioners were, however, -- does not – were not given any notice before directing the first petitioner to remove the encroachments. This objection is strenuously pursued by the learned counsel for the petitioners.

It is no doubt true that Section 192, which authorizes the Municipal Commissioner to remove the encroachments on the road, does not contemplate prior notice, though while taking action under Section 194 the law contemplates notice to the person who is to be effected. The petitioners are allegedly in possession of the property for over three decades and, therefore, in the interest of justice this writ petition is disposed of in the following manner:

The petitioners are given liberty to file explanation/representation treating the impugned intimation as a notice by producing necessary proof. As and when such objections/representation is filed, the 6th respondent shall consider the same and take appropriate decision before taking action for removal of the alleged encroachments within a period of one week from the date of submission of explanation by the petitioner. Till a decision is taken, there shall be status quo.

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(V.V.S. Rao, J)

7th October 2005

Note:

Office to dispatch copy by today.

(By order)

svs